

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 10-0352

NANSU RODDY,

Petitioner and Appellee,

v.

MICHAEL E. SPREADBURY,

Respondent and Appellant.

FILED

AUG 10 2010

ORDER

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

On July 19, 2010, Michael E. Spreadbury (Spreadbury) filed a Petition for Out of Time Appeal from an order dated May 20, 2010. He contends that this order from the Twenty-first Judicial District Court, Ravalli County Cause No. DV 10-93, was interlocutory in nature, and thereby attempts to justify the untimeliness of his appeal.

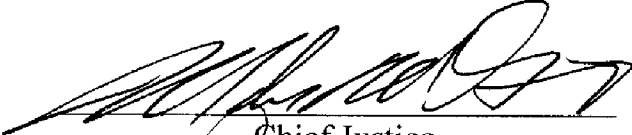
Petitioner Nansu Roddy, by counsel (Roddy), has filed a Motion to Dismiss Appeal and Brief in Support. She argues that the Notice of Appeal was not filed until 57 days after the final judgment was rendered, and that the May 20 District Court order is a final order. She further argues that Spreadbury has not established the existence of any extraordinary circumstances as required by M. R. App. P. 4(6).

Spreadbury has failed to file a verified petition or affidavit as is required by M. R. App. P. 4(6). Characterizing the District Court's Order on Appeal of City Court Order of Protection as an interlocutory order does not change the nature of the order. It is obvious that Spreadbury appealed the Permanent Order of Protection from the Hamilton City Court to the District Court, and that the District Court order affirming the order of protection constitutes a final order. Therefore, the appeal was untimely. Spreadbury has failed to establish extraordinary circumstances justifying the late filing of an appeal. Accordingly,

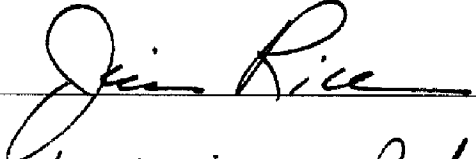
IT IS ORDERED that Spreadbury's Motion to File an Out of Time Appeal is DENIED. In light of this conclusion, all issues raised by Spreadbury relative to the filing fee are moot as Spreadbury is now not required to pay a filing fee.

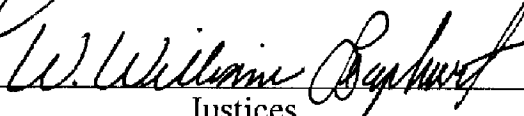
The Clerk is directed to serve a copy of this Order upon counsel of record and upon Spreadbury at his last known address.

DATED this 10th day of August, 2010.



Chief Justice
Patricia Cotten





Justices